

OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES



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Executive Secretary

ARIZONA CORPORATION COMMISSION

2004 FEB 17 A 11: 06

DATE: February 17, 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO: W-04154A-02-0848

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

SUNRISE WELL ASSOCIATION, INC.
(ADJUDICATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 26, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 2 AND 3, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

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FEB 17 2004

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 SUNRISE WELL ASSOCIATION, INC. FOR
10 ADJUDICATION THAT IS NOT A PUBLIC
11 SERVICE CORPORATION.

DOCKET NO. W-04154A-02-0848

DECISION NO. _____

12 OPINION AND ORDER

13 DATE OF HEARING: November 13, 2003

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Teena Wolfe

16 APPEARANCES: Ms. Audrey A. Baker and Mr. Jeffrey Crockett, SNELL
17 & WILMER, LLP, on behalf of Sunrise Well
18 Association, Inc.;

19 Ms. Lisa Vandenberg, Attorney, Legal Division, on
20 behalf of the Utilities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On November 14, 2002, Sunrise Well Association, Inc. ("Sunrise" or "Applicant") filed with
24 the Arizona Corporation Commission ("Commission") an application for adjudication that it is not a
25 public service corporation under Arizona law ("Application"). Sunrise is an Arizona nonprofit
26 corporation that currently provides water utility service to eight customers located within a 15 acre
27 subdivision in northwestern Mohave County, Arizona.

28 On August 12, 2003, a Procedural Order was issued in this matter setting the matter for
hearing and requiring public notice of the Application.

On September 25, 2003, Sunrise mailed notice of the hearing to all property owners in the
requested adjudication area. No intervention requests were filed.

On September 29, 2003, the Utilities Division Staff ("Staff") filed its Staff Report in this

1 matter recommending that the Commission adjudicate Sunrise not a public service corporation,
2 subject to certain conditions.

3 A hearing on the application was held as scheduled on November 13, 2003 before a duly
4 authorized Administrative Law Judge of the Commission. Applicant and Staff appeared through
5 counsel and presented evidence. No persons appeared at the hearing to provide public comment.
6 Following the hearing, this matter was taken under advisement pending the submission of a
7 Recommended Opinion and Order to the Commission.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes and orders that:

11 **FINDINGS OF FACT**

12 1. Sunrise is an Arizona nonprofit corporation, incorporated on July 22, 2002, that
13 currently provides water utility service to eight customers in a 15 acre subdivision in northwestern
14 Mohave County, Arizona. There are a total of 15 parcels in the subdivision. The requested
15 adjudication area is fully described in Exhibit A, attached hereto and incorporated herein by
16 reference.

17 2. On November 14, 2002, Sunrise filed the Application with the Commission requesting
18 that it be adjudicated not a public service corporation under Arizona law.

19 3. On August 12, 2003, a Procedural Order was issued setting this matter for hearing and
20 requiring public notice of the Application to be provided to each property owner in the requested
21 adjudication area.

22 4. On September 25, 2003, Applicant filed its Certification of Mailing verifying that
23 notice of the application and the hearing, in the form required by the August 12, 2003 Procedural
24 Order, had been mailed to all property owners in the requested adjudication area.

25 5. No motions to intervene were filed.

26 6. On September 29, 2003, Staff filed a Staff Report recommending approval of the
27 Application with conditions. In the Staff Report, Staff reviewed the criteria set forth in Decision No.
28 55568, and reviewed the Application and accompanying documentation. The Staff Report

1 recommended that Sunrise be adjudicated not a public service corporation provided that it satisfies
2 the following conditions:

- 3
- 4 a. that Sunrise provide evidence that each member/customer has equal voting rights; and
- 5 b. that Sunrise provide evidence that it retains direct ownership of the water
6 production, storage and distribution assets necessary to serve the
7 customers/members.

8 7. The Staff Report further recommended that if Sunrise fails to meet the conditions
9 listed in Findings of Fact No. 6 above, that Sunrise be required to file an application for a Certificate
10 of Convenience and Necessity.

11 8. On November 13, 2003, Sunrise docketed a Compliance Filing. The Compliance
12 Filing included as an attachment a copy of a fully executed quitclaim deed dated September 13, 2003,
13 and recorded by the Mohave County Recorder on November 4, 2003, pursuant to which Dale P. Nash
14 and Phyllis C. Nash, as trustees of the R. & M. Family Trust ("Trust") conveyed to Sunrise all right,
15 title interest and claim the Trust had in certain property located in the requested adjudication area,
16 along with improvements and appurtenances thereto.

17 9. The hearing on this matter was held as scheduled on November 13, 2003. Sunrise and
18 Staff appeared through counsel and presented evidence. No members of the public appeared to
19 provide public comment.

20 10. In Commission Decision No. 55568 (May 7, 1987), the Commission issued a policy
21 directive regarding applications for adjudication not a public service corporation, and provided the
22 following criteria for evaluation of such applications:

- 23 1) the application must be submitted by a non-profit homeowners association;
- 24 2) the application is a bona fide request by a majority of the membership of the
25 association through a petition signed by 51 percent or more of the then-
26 existing members;
- 27 3) that all such associations making an application have complete ownership of
28 the system and the necessary assets;

- 1 4) that every customer is a member/owner with equal voting rights and that each
2 member is or will be a customer;
- 3 5) that the service area involved encompasses a fixed territory which is not
4 within the service area of a municipal utility or public service corporation, or
5 if it is, that the municipal utility or public service corporation is unable to
6 serve;
- 7 6) that there is a prohibition against further sub-division evidenced by deed
8 restrictions, zoning, water restrictions, or other enforceable governmental
9 regulations; and
- 10 7) that the membership is restricted to a fixed number of customers, actual or
11 potential.

12 11. Sunrise's Application included a copy of an easement dated September 5, 2002, and
13 recorded by the Mohave County Recorder on November 1, 2002, pursuant to which Dale P. Nash and
14 Phyllis C. Nash, as trustees of the Trust, granted to Sunrise easements for water lines and a well,
15 well-house and storage tanks. Sunrise's witness testified that the purpose of granting the easements
16 is to allow Sunrise to deliver water to the individual houses of the members of the association.

17 12. At the hearing, Sunrise provided, as an evidentiary exhibit, an amendment to its
18 bylaws. The amendment adds two sections to the bylaws; one addresses membership, and one
19 addresses voting rights of members. Sunrise's witness testified that the amended bylaws grant a
20 dormant, nonvoting membership to each parcel in the association, and that when an active waterline
21 is hooked up to a parcel, the dormant, nonvoting membership becomes an active, voting membership.

22 13. Sunrise also provided at the hearing a notarized bill of sale, dated September 13, 2003,
23 transferring the existing distribution water lines in the requested adjudication area from Lewis
24 Petersen, Blaine Richan and Dale P. Nash to Sunrise.

25 14. Staff's witness testified at the hearing that based on the evidence presented at the
26 hearing, including the evidence provided by the Compliance Filing (described in Findings of Fact No.
27 8 above), Staff believes that Sunrise's Application meets the Commission's criteria for being
28 adjudicated not a public service corporation, and recommends that the Commission grant the
Application.

15. Sunrise meets the criteria for evaluation of applications for adjudication not a public

1 service corporation provided by the policy directive issued in Decision No. 55568 in the following
2 manner:

- 3 1) Sunrise is a nonprofit corporation formed by the property owners in the
4 requested adjudication area to provide water for its members, who own land in
5 the requested area.
- 6 2) A majority of the existing membership of Sunrise has signed a petition
7 requesting approval of the Application. Five of the existing eight
8 member/customers of Sunrise signed the petition attached to the Application.
- 9 3) Sunrise has complete ownership of the system and necessary assets.
- 10 4) Under Sunrise's bylaws, every customer of Sunrise is a member with equal
11 voting rights, and every member is or will be a customer.
- 12 5) Sunrise's service area encompasses a fixed area that is not within the service
13 area of a municipal utility or public service corporation. Sunrise limits water
14 service to the parcel owners within the requested adjudication area, which
15 contains fifteen parcels.
- 16 6) Sunrise's corporate bylaws prohibit further subdivision of the parcels in the
17 service area.
- 18 7) Sunrise's bylaws restrict membership to a fixed number of potential
19 customers. The current membership is eight. Total allowable membership is
20 limited to fifteen. Membership in the nonprofit corporation is appurtenant to
21 the parcel and limited to landowners in the subject area.

18 16. The restriction to a fixed number of memberships, the prohibition against further
19 subdivision, and equal voting rights requirements are evidenced not by deed restriction, but by
20 bylaws. According to Sunrise's bylaws, the bylaws may be altered, amended, repealed, and new
21 bylaws may be adopted by a majority of Sunrise's Directors. We will therefore require that if
22 Sunrise's bylaws are ever changed to allow further subdivision of the current fifteen parcels, to allow
23 an increased number of memberships, or to change the equal voting rights requirements, the
24 adjudication granted by this Order should become null and void without further Commission Order.
25 In that event, we will require that Sunrise file an application for a Certificate of Convenience and
26 Necessity within thirty days.

27 17. According to the Application, Sunrise's system consists of a well, a pump, one 4,200
28 gallon water tank, one 28,000 gallon water tank, and 1,500 feet of water distribution lines. Sunrise's

1 witness testified that Sunrise is currently capable of serving all fifteen parcels upon request.

2 18. Due to the fact that Sunrise has only fifteen connections, it is not subject to Arizona
3 Department of Environmental Quality ("ADEQ") monitoring regulations.

4 19. Staff's witness testified that it is unaware of any Arizona Department of Water
5 Resources ("ADWR") requirements for a system of this size.

6 **CONCLUSIONS OF LAW**

7 1. The Commission has jurisdiction over the subject matter of the Application.

8 2. Sunrise is not at this time a public service corporation within the meaning of Article
9 XV of the Arizona Constitution.

10 3. Sunrise remains subject to applicable laws, regulations and orders of other regulatory
11 agencies, including but not limited to ADEQ, ADWR and Mohave County.

12 4. Notice of the Application was provided in accordance with law.

13 5. Staff's recommendation as set forth in Findings of Fact No. 14 above is reasonable
14 and should be adopted, along with the provisions set forth in Findings of Fact No. 16 above.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of Sunrise Well Association, Inc. for
17 adjudication not a public service corporation is hereby granted.

18 IT IS FURTHER ORDERED that if the bylaws of Sunrise Well Association, Inc. are ever
19 changed to allow further subdivision of the current fifteen parcels in the requested adjudication area,
20 to allow an increased number of memberships, or to change the equal voting rights requirements, that
21 the adjudication granted herein shall immediately become null and void without further Commission
22 Order, and Sunrise Well Association, Inc. shall file an application for a Certificate of Convenience
23 and Necessity within thirty days.
24
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28

1 IT IS FURTHER ORDERED that Sunrise Well Association, Inc. is hereby advised of its
 2 continuing obligations under the applicable laws, regulations and orders of other regulatory agencies,
 3 including but not limited to the Arizona Department of Environmental Quality, the Arizona
 4 Department of Water Resources and Mohave County.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6
 7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
 8
 9

10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11 COMMISSIONER

COMMISSIONER

12
 13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 14 Secretary of the Arizona Corporation Commission, have
 15 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this ____ day of _____, 2004.

16
 17 _____
 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

18 DISSENT _____

19 DISSENT _____

20 TW:mj
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SERVICE LIST FOR:

SUNRISE WELL ASSOCIATION, INC.

DOCKET NO.:

W-04154A-02-0848

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LEGAL DESCRIPTION OF AREA TO BE ADJUDICATED

The East 396 feet of the South half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 16 T39 N, R16 W of the Gila and Salt River Base and Meridian, Mohave County, Arizona

North half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 16 T39N, R16W of the Gila and Salt River Base and Meridian, Mohave County Arizona.

South half of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 16 T39N, R16W of the Gila and Salt River Base and Meridian, Mohave County, Arizona.

North half of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 16 T39N, R16W of the Gila and Salt River Base and Meridian, Mohave County, Arizona.

North half of the Northeast Quarter of the Southwest Quarter of the Southeast Quarter of Section 16 T39N, R16W of the Gila and Salt River Base and Meridian, Mohave County, Arizona.